

## **REMARKS**

### **Amendments**

#### ***Amendments to the Claims***

Applicant has amended the independent claims 1, 14, 18 and 25 to more particularly point out the use of the initial scale factor when computing the individual scale factors. Applicant has further amended the independent claims to specify that the individual scale factors as claimed control distortion in an encoded audio signal. No new matter has been added as a result of these amendments as they are supported, *intra alia*, in Applicant's specification at paragraph 50 and block 502 of Figure 5.

### **Rejections**

#### ***Rejections under 35 U.S.C. § 101***

#### **Claims 1-21**

Claims 1-21 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter as defined by the Interim Guidelines.

With regard to amended claim 1, Applicant respectfully submits that computing individual scale factors produces a tangible result because claim specifies that the individual scale factors control distortion in an encoded audio signal. Applicant respectfully submits that controlling distortion is useful when encoding an audio signal. Applicant respectfully submits that computing the individual scale factors is substantially repeatable and thus concrete. Therefore, claim 1 does recite a tangible, useful and concrete result as defined by the Interim Guidelines.

With regard to amended claims 14 and 18, the Examiner appears to be rejecting the claims because the claims recite executable instructions instead of a computer program. The Interim Guidelines state that a computer program embodied in a computer-readable medium is statutory. However, the Interim Guidelines do NOT require the recitation of a computer program for a claim to be statutory. Instead, the Interim Guidelines state that a claim that recites "acts" to be performed by a computer is statutory when the acts are embodied on a computer-readable medium because the computer-

readable medium defines a functional interrelationship between the acts and the hardware that carries out the acts.

Applicant respectfully points out that the preamble of computer-readable medium claim 14 recites instructions that, when executed by a processor, cause the processor to perform the acts recited in the body of claim 14. Thus, Applicant's computer-readable medium as claimed in claim 14 defines the functional interrelationship between the claimed acts and the hardware, i.e., the processor, that carries out the acts.

Similarly, in system claim 18, Applicant claims a set of instructions that are executed by a processor from a memory to cause the processor to carry out a series of acts. Thus, Applicant's memory in claim 18 defines the functional interrelationship between the claimed acts and the processor that carries out the acts.

Therefore, the fact that claims 14 and 18 both claim computer-readable media as having executable instructions instead of a computer program does not render the claims non-statutory.

Accordingly, Applicant respectfully submits that the invention as claimed in claims 1-21 is statutory subject matter and respectfully request the withdrawal of the rejection of the claims under 35 U.S.C. § 101.

***Rejections under 35 U.S.C. § 102(e)***

**Claims 1, 2, 6, 8, 9, 12-14, 15, 18, 19, 22, 23 and 25**

Claims 1, 2, 6, 8, 9, 12-14, 15, 18, 19, 22, 23 and 25 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Lopez-Estrada, et al. U.S. Publication 2003/0083867. Applicant does not admit that Lopez-Estrada is prior art and reserves the right to challenge the reference at a later date.

Lopez-Estrada discloses encoding MPEG layer 3 (also known as MP3) audio, using an inner "rate" loop and an outer "distortion control" loop. Lopez-Estrada states that both loops are in accordance with the ISO/IEC specification, i.e., the MPEG layer 3 standard as referred to in paragraph 2 of Lopez-Estrada's specification. Applicant is submitting herewith *An Introduction to MPEG Layer 3* by Karlheinz Brandenburg and Harald Popp. Applicant directs the Examiner attention to page 8, which describes the inner rate and outer noise control loops defined by the MPEG standard.

The Examiner is equating Applicant's claimed computing of individual scale factors with Lopez-Estrada's outer distortion control loop. However, as specified by the MPEG standard, the outer noise, i.e., distortion, control loop uses 1.0 as the default starting value for each scale factor (Brandenburg: page 8, lines 27-28). In amended claims 1, 14, 18 and 25, Applicant claims computing individual scale factors using the adjusted common scale value as the initial value for each individual scale factor. Because Lopez-Estrada does not teach or suggest using a different initial value than the value specified by the MPEG standard, i.e., 1.0, Lopez-Estrada's outer distortion control loop cannot be properly interpreted as equivalent to computing individual scale factors as claimed by Applicant.

Accordingly, Applicant respectfully submits that the invention claimed in claims 1, 2, 6, 8, 9, 12-14, 15, 18, 19, 22, 23 and 25 is not anticipated by Lopez-Estrada under 35 U.S.C. § 102(e) and respectfully requests the withdrawal of the rejection of the claims.

#### **Allowable Subject Matter**

Applicant thanks the Examiner for indicating that claims 2-5, 7, 10, 11, 16, 17, 20, 21 and 24 contain allowable subject matter. Because Applicant believes all the pending claims are allowable, Applicant has not placed these claims into independent form in this response.

#### **SUMMARY**

Claims 1-25 are currently pending. In view of the foregoing amendments and remarks, Applicant respectfully submits that the pending claims are in condition for allowance. Applicant respectfully requests reconsideration of the application and allowance of the pending claims.

If the Examiner determines the prompt allowance of these claims could be facilitated by a telephone conference, the Examiner is invited to contact Sue Holloway at (408) 720-8300 x309.

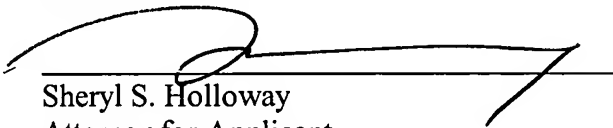
**Deposit Account Authorization**

Authorization is hereby given to charge our Deposit Account No. 02-2666 for any charges that may be due. Furthermore, if an extension is required, then Applicant hereby requests such extension.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR  
& ZAFMAN LLP

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